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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re the Marriage of CRAIG and RHONDA
BOONE.

CRAIG A. BOONE

Appellant,

v.

RHONDA L. BOONE

Respondent.

F065265

(Super. Ct. No. 10CEFL00791)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Glenda Allen-Hill, Judge.

Law Office of Michael J. Margosian and Michael J. Margosian for Appellant.

Law Office of Cindy J. Hopper and Cindy J. Hopper for Respondent.

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* Before Levy, Acting P.J., Kane, J. and Franson, J.

Appellant Craig A. Boone (Craig) challenges the trial court's decision to award Rhonda L. Boone (Rhonda) temporary spousal support of \$3,500 per month pursuant to Family Code section 3600.¹ Craig contends the trial court abused its discretion because (1) the evidence was insufficient to support the finding that Craig's corporation paid personal expenses of at least \$4,000 per month, (2) the court failed to make any findings as to his actual income and ability to pay in making the order of temporary spousal support, and (3) the court should have imputed to Rhonda the ability to earn at least minimum wage.

We reject Craig's claim of factual error regarding expenses paid by the corporation because it is based on his assumption that his exhibits and testimony concerning the 2011 expenses were both credible and complete—an assumption that is contrary to established rules of appellate procedure that require this court to view the evidence in the light most favorable to the trial court's order. We further conclude that the trial court's order, properly interpreted, does include a finding regarding Craig's income. Lastly, we conclude that the trial court did not abuse its discretion when it imputed no income to Rhonda because she had worked primarily within the home prior to the separation and the purpose of temporary spousal support is to maintain the status quo.

We therefore affirm the order of temporary spousal support.

FACTS AND PROCEEDINGS

Craig and Rhonda were married on June 1, 1985, and separated on February 1, 2010, after 24 years and eight months of marriage. They had two daughters, the youngest of whom became an adult in late 2010.

During the marriage, Craig was self-employed, working as a certified public accountant. His business was organized as a corporation named Craig A. Boone, CPA,

¹ All further statutory references are to the Family Code unless indicated otherwise.

Inc. After revocation of his license in 2004, he continued as an accountant providing accounting and tax preparation services to his clients.

On February 10, 2010, Craig filed a petition for dissolution of marriage. Rhonda moved out of the family residence sometime in March 2010.

In October 2010, Rhonda filed a motion seeking temporary spousal support, attorney's fees and an appraisal of the family home and the business owned and operated by Craig.

In February 2011, the trial court ordered Craig to pay temporary spousal support of \$2,500 per month, pending a further hearing in April 2011.

Further contested hearings were held by the trial court and, on October 11, 2011, counsel for the parties presented their closing arguments and the court took the matter under submission.

On November 7, 2011, the trial court orally announced its ruling, which included an order of temporary spousal support of \$3,500 per month, effective October 21, 2010, with arrears to be paid \$100 per month effective December 1, 2011. The court directed Rhonda's counsel to prepare the order after hearing.

Approximately a week later, Craig filed a written request for statement of decision. Rhonda responded by filing an objection to the request on the ground that the request had to be made before the matter was submitted to the court for decision.

On May 4, 2012, the trial court signed and filed a written "ORDER AFTER HEARING" that had been prepared by Rhonda's counsel. The written order tracked the wording of the oral ruling given at the November 7, 2011, hearing. Among other things, the written order directed Craig to pay Rhonda temporary spousal support of \$3,500 per month commencing on October 21, 2010, payable on the first of each month until the death of either party, the remarriage of Rhonda, or further order of the court.

The written order included findings that Craig was self-employed and had many expenses paid on his behalf by the business, which made it difficult for the court to

determine his actual income. The court reviewed a substantial number of documents, some which were internally inconsistent. The court considered the parties proposals as to Craig's income. Craig asserted that his monthly income was \$5,973 and Rhonda proposed an income of \$17,000 per month. The court stated that it believed the (1) amount stated by Craig did not include any of the expenses that are paid on his behalf by the corporation and (2) the corporation was paying at least \$4,000 per month on Craig's behalf. The court also stated that the monthly income proposed by Rhonda (\$17,000) was not supported by any documents before the court. Ultimately, the court determined that Craig's monthly income was \$12,525—an amount it believed was consistent with what was earned in 2010.

As to income earned by Rhonda, the trial court found that during the marriage Rhonda worked sporadically out of the home, but the only evidence of that income was a Form 1099-MISC from MonaVie LLC² in South Jordan, Utah that stated Rhonda received nonemployee compensation of \$5,485.52 in 2008. The court concluded that there had been no showing that Rhonda received any income through Herbalife, Dr. Singh or her father. Any money that her parents gave to assist her was not shown to be recurring such that the court could consider it income.

As to the various health issues that Rhonda alleged prevented her from working full time, the court found there was insufficient evidence to establish that she would be prevented from working.

One of the issues in this appeal is whether any income should have been imputed to Rhonda. The trial court concluded that it would not assign any income to Rhonda because of the amount of time she had committed to domestic duties, she had been out of

² MonaVie is a company that manufactures and distributes health beverages and related products that are sold through a network of independent distributors. (*MonaVie, LLC v. Wha Lit Loh* (D.Utah, Apr. 13, 2011, No. 2:11-CV-265 TS) 2011 WL 1402846.)

the work force for a substantial amount of time, and her surgical technician's certificate might have been out of date.

In June 2012, Craig filed a notice of appeal from the order directing the payment of temporary spousal support.

DISCUSSION

I. ORDERS SETTING TEMPORARY SPOUSAL SUPPORT

A. Statutory Basis

While a proceeding for the dissolution of marriage is pending, the trial court may enter a temporary order of spousal support pursuant to section 3600, which states:

“During the pendency of any proceeding for dissolution of marriage ... the court *may order* (a) the husband or wife to pay *any amount* that is necessary for the support of the wife or husband, consistent with the requirements of subdivisions (i) and (m) of Section 4320 and Section 4325”³ (Italics added.)

Generally, an award of temporary support is obtained before any final determination of the various issues presented by the dissolution proceeding. (*In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 637.) The purpose of a temporary order of spousal support is to maintain the living conditions and standards of the parties as closely as possible to the status quo, pending trial and the division of assets and liabilities of the parties. (*Ibid.*) In view of this purpose, the order is based on need and is intended to allow the supported spouse to live in his or her accustomed manner pending the ultimate resolution of the dissolution proceeding. (*Ibid.*)

The Legislature's use of the terms “may order” and “any amount” has led appellate courts to conclude that an award of temporary spousal support rests within the broad discretion of the trial court “subject only to the moving party's needs and the other

³ The referenced statutes address situations involving domestic violence and the criminal conviction of an abusive spouse. These provisions are not relevant to the issues raised in this appeal.

party's ability to pay.” (E.g., *In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 594.)

B. Appellate Review of Temporary Support Order

A temporary support order is subject to direct appeal. (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368.)

Because the award of temporary spousal support is committed to the trial court's discretion, appellate courts review such an order under the deferential abuse of discretion standard. (*In re Marriage of MacManus* (2010) 182 Cal.App.4th 330, 337.)

“The abuse of discretion standard is not a unified standard; the deference it calls for varies according to the aspect of a trial court's ruling under review. The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.” (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711, fns. omitted [motion to recuse prosecutor review for abuse of discretion].)

The discretion granted to a trial court in awarding temporary spousal support generally means that the court must select a particular amount out of a range of amounts that would be appropriate under the facts of the case. Thus, the foregoing general principles regarding the abuse of discretion standard of review are supplemented by the principle that the “abuse of discretion standard ... measures whether, given the established evidence, the act of the lower tribunal falls within the permissible range of options set by the legal criteria.” (See *Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 831.)

II. DOCTRINE OF DISENTITLEMENT

As a threshold issue, Rhonda contends that this court should dismiss Craig's appeal under the doctrine of disentitlement. Rhonda supported her contention by requesting we take judicial notice of the trial court's January 8, 2013, minute order that found Craig was “in willful failure to pay support and failure to comply with the order

previously issued” and directed Craig “serve 20 days in custody.” This court granted her motion for judicial notice.

The disentitlement doctrine is based on an appellate court’s inherent power to use its processes to induce compliance with valid orders. (*In re Marriage of Hofer* (2012) 208 Cal.App.4th 454, 459.) Under the doctrine, an appellate court may exercise its inherent discretionary authority to dismiss the appeal of a party who has refused to obey the superior court’s legal orders. (*Ibid.*) The doctrine prevents a party from seeking assistance from the court while maintaining an attitude of contempt to legal orders and processes of the courts of this state. (*Ibid.*) Generally, the disentitlement doctrine is applied when the balance of all equitable concerns make dismissal of the appeal an appropriate sanction. (*In re Z.K.* (2011) 201 Cal.App.4th 51, 63.)

Craig argues that the disentitlement doctrine should not be applied to him because he could not afford to pay the support as ordered by the trial court and the issues he has raised on appeal are intertwined with the amount of the ordered payments and, thus, his ability to comply with the order.

Because a balancing of all the equitable concerns involves considering whether the trial court committed errors that caused it to award an excessive amount of temporary support, we cannot complete the balancing at the beginning of our analysis of this appeal. Accordingly, we will proceed to the merits of the arguments raised by Craig in his appeal and will not, as a threshold matter, dismiss his appeal under the doctrine of disentitlement.

III. IMPUTING EARNINGS AT MINIMUM WAGE TO RHONDA

A. Trial Court’s Ruling and Craig’s Contentions

The trial court did not assign any income to Rhonda because of the time she committed to domestic duties during the marriage and the substantial amount of time that she had been out of the work force. The court also found that it was uncertain what

Rhonda needed to do to update her skills, training and certificate as a surgical technician and that it was not reasonable to assume that she would have accomplished this in the 20-month period since the separation.

Craig contends that the trial court abused its discretion in not imputing earnings to Rhonda of at least minimum wage or \$1,387 per month and referred to evidence concerning an opportunity for Rhonda to work, her willingness to work, and her ability to work. Craig acknowledges that he located no case dealing with imputation of income to a spouse seeking *temporary* spousal support, but cites principles set forth in a case involving an attempt to modify child support payments. (See *In re Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1299 [imputation of income].)

Because the abuse of discretion standard of appellate review provides for different tests for legal and factual error, we will analyze each type of error separately.

B. Legal Error

First, the trial court's written order stated that the purpose of temporary spousal support is to maintain the status quo and noted this purpose often is difficult to achieve because the same income must support two homes instead of one. This statement of the purpose of temporary spousal support is a correct statement of law. (See *In re Marriage of Gruen, supra*, 191 Cal.App.4th at p. 637 [purpose of a temporary order of spousal support is to maintain the living conditions and standards of the parties as closely as possible to the status quo, pending trial and division of assets and liabilities of parties].) Therefore, the trial court did not commit legal error when it applied this legal principle to determine the amount of the award.

Second, no statute or published appellate decision *requires* a trial court to impute minimum wage to a nonworking spouse when computing temporary spousal support. We are not inclined to be the first appellate court to adopt such a requirement because (1) Craig has not argued that the statutory text of section 3600, which includes the phrases

“may order” and “any amount,” expresses or implies such limitations on the trial court’s discretionary authority and (2) Craig has offered no policy justifications for such a significant modification of established law.

Therefore, we conclude that the trial court did not apply the wrong legal principles when it decided not to impute income to Rhonda.

B. Factual Error

Craig also contends that the trial court abused its discretion by failing to impute income to Rhonda because its findings were not supported by the evidence. Craig asserts:

“The evidence before the court was that the surgical technician’s degree was not so remote that Rhonda could not have made efforts during the twenty-one (21) month period to update the same and commence supporting herself. Further, even if the certificate was outdated, there was nothing to suggest that Rhonda could not have at least obtained or made efforts to obtain a minimum wage job. At the very minimum, the court should have assessed Rhonda with the ability to earn minimum wage.”

Craig’s claim of factual error fails on a number of grounds. First, he has failed to cite credible evidence in the record that established as a matter of law (1) the steps required to update Rhonda’s surgical technician’s certificate and (2) the amount of time it would take to complete those steps.⁴ Thus, Craig has not demonstrated that the trial court committed error in finding that it was not reasonable to assume that Rhonda would have determined what needed to be done to update her certificate, accomplish those tasks, and then utilize the certificate to obtain employment within the period since separation.

⁴ Furthermore, as the above-quoted argument shows, Craig has not supported his version of what the evidence shows with citations to the record, as is required by California Rules of Court, rule 8.204(a)(1)(C). (See *Sky River LLC v Kern County* (2013) 214 Cal.App.4th 720, 741 [rule applies to matters referenced at any point in brief, not just the statement of facts].)

Furthermore, even if Craig had shown that the trial court was required to find that, with reasonable effort, Rhonda *could* have been working as a surgical technician or at a job paying minimum wage, we cannot conclude that such a finding would have required the trial court to impute income to Rhonda. The trial court's finding regarding the status quo during the marriage—namely, that Rhonda had spent a substantial amount of time out of the work force—provides a sufficient factual basis for not imputing income to her for purposes of calculating temporary spousal support. (See *In re Marriage of Gruen*, *supra*, 191 Cal.App.4th at p. 637 [purpose of temporary spousal support is to maintain status quo].) In short, imputing earnings to Rhonda would have undermined the purpose of allowing her to maintain the living conditions and standards in the manner to which she was accustomed before the separation. (*Ibid.*)

IV. DETERMINATION OF CRAIG'S ACTUAL INCOME

A. Trial Court's Ruling and Craig's Contentions

The trial court regarded the question of Craig's income as the most difficult question before it. The court consider Craig's proposal that his monthly income was \$5,973, but did not believe that amount included his expenses that were paid by the corporation. The court stated it believed that at least \$4,000 per month was paid on Craig's behalf by the corporation. The court rejected Rhonda's proposal that Craig earned \$17,000 per month because that amount was not shown by the documents before the court. The court stated it "considered the amount of \$12,525.00 per month, which the Court believes is more consistent with what was earned in 2010."

Craig contends the trial court abused its discretion when it failed to make a determination as to his actual income in making its order for temporary spousal support. He argues the court made its order "without any findings as to the income levels used in making the award of spousal support"

B. Analysis of Court's Finding Regarding Income

We reject Craig's contention that the trial court did not make a finding regarding his income level. We interpret the court's statement that it "considered the amount of \$12,525.00 per month, which the Court believes is more consistent with what was earned in 2010" as a finding that Craig's income was \$12,525 per month. Furthermore, in our view, the trial court used that amount in awarding Rhonda temporary spousal support of \$3,500 per month.

We acknowledge that the trial court's use of the word "considered" in the statement that it "considered the amount of \$12,525.00 per month" is ambiguous. The court could have meant that it merely pondered that amount with a view to careful examination, but did not actually conclude that amount was Craig's income. (See *Gonzales v. Interinsurance Exchange* (1978) 84 Cal.App.3d 58, 63 [dictionary definition of "consider"].) Alternatively, the court could have meant that it determined or found Craig's income was \$12,525 per month.

When confronted with an ambiguous judgment or order, a reviewing court determines its meaning according to the rules governing the interpretation of writings generally. (*Southern Pacific Pipe Lines, Inc. v. State Bd. of Equalization* (1993) 14 Cal.App.4th 42, 49.) Therefore, we must give the written order a reasonable interpretation, which includes reading the order as a whole, viewing its language in light of the facts and issues before the court, and analyzing each statement in its proper context. (Cf. 16 Cal.Jur.3d (2012) Courts, § 328, p. 880 [construction of appellate opinion subject to rules that apply to any other writing].)

Under these rules of interpretation, we believe the interpretation that the court found Craig's income was \$12,525 per month is both reasonable and the most probable interpretation. The statement was made in the last sentence of the paragraph where the court addressed the issue of Craig's income and, therefore, is likely to express the court's conclusion regarding that issue. Furthermore, that amount of monthly income (i.e.,

\$12,525) does not appear in the papers that were submitted to the trial court and are a part of the appellate record. Because this figure is not contained elsewhere in the record, we infer that the amount reflects the court's independent resolution of the question after weighing the arguments and evidence presented by the parties. Accordingly, we conclude the trial court did express its finding regarding the amount of Craig's monthly income.

In addition, the foregoing interpretation is reasonable because a finding that Craig's income was \$12,525 per month is supported by substantial evidence. Craig's income and expense declaration dated January 18, 2011, stated that (1) he worked about 50 hours per week, (2) he got paid \$8,800 gross (before taxes) per month, and (3) his average monthly expenses, which included spousal support of \$2,714 per month, totaled \$10,177.⁵ Craig's responsive declaration, also dated January 18, 2011, stated his current billing rate was \$195 per hour; he earned \$8,798 per month for the last three months of 2010; and his "actual gross income for the entire year 2010 was only \$254,358."⁶

When the annual amount of \$254,358 is divided by 12 months, it produces an average gross monthly income of approximately \$21,200. Thus, the trial court's finding that Craig's earnings were \$12,525 per month demonstrates that the court believed Craig's current earnings were approximately 60 percent of his average gross monthly income during 2010. When considered in the context of Craig's \$195 per hour billing rate, the finding that his income was \$12,525 per month represents collections on approximately 64.25 hours of billable work per month. This implied finding of 64.25

⁵ In contrast, Craig's income and expense declaration filed September 29, 2011, again stated that he worked about 50 hours per week, but lowered his gross pay to \$5,973 per month and estimated his average expenses at \$9,674 per month.

⁶ On August 11, 2011, Craig testified about an *accrual* basis profit and loss statement for his business that included the entry "Total income, \$270,027.11." He stated the entry was for total income *billed* for 2010 and did not indicate his total gross receipts.

hours of billable work per month is reasonable in view of Craig's two declarations that stated he works about 50 hours per week (i.e., 200 hours per month).

In summary, the credible portions of Craig's own declarations constitute substantial evidence to support the trial court's finding that Craig's income was \$12,525 per month.

C. Finding Regarding Expenses Paid by the Corporation

Craig also contends the trial court erred when it found that he had "at least \$4,000.00 per month that is paid on his behalf through the Corporation, if not more." Craig argues that "all of the discussions relating to personal expenses [paid] by the corporation related to prior years, not considering what the expenses were for the year 2011, when the court made the order."

Craig's arguments regarding the expenses paid through the corporation assume that the trial court found the information that he submitted about the expenses paid in 2011 and his testimony on that subject was credible. (Cf. *In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 160 [trial court disbelieved testimony husband cited on appeal to support his challenge to an award of temporary spousal support]; *In re Marriage of Hofer, supra*, 208 Cal.App.4th at p. 460 [trier of fact may reject uncontradicted evidence as not credible].) An appellant is not entitled to rely on such an assumption because the appellant has the burden of establishing error and any presumptions made must favor the trial court's order. (*In re Marriage of LaMoure* (2011) 198 Cal.App.4th 807, 825.)

Accordingly, Craig's contention that the trial court committed factual error in analyzing the expenses paid by the corporation is rejected because, among other things, he has failed to establish that his testimony and exhibits regarding those expenses were both credible and complete.

DISPOSITION

The order of temporary spousal support is affirmed. Respondent shall recover her costs on appeal.